

Culture and Medicine

California's mandatory reporting of domestic violence injuries: does the law go too far or not far enough?

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What the law says

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It is estimated that adult domestic violence affects 2 to 6 million intimate and married relationships each year in the United States.¹ According to the US Department of Justice, almost 1 million women are assaulted by intimate partners every year, and over half of these assaults result in injury.² According to these data, over 43,000 women sustain gunshots, stab wounds, broken bones, internal injuries, or loss of consciousness at the hands of current or former intimate partners. In addition, over 57,000 women are raped or sexually assaulted by intimates; over 390,000 sustain minor injuries such as bruises, cuts, or swelling. Up to one third of women injured in domestic assaults seek medical care at emergency departments or community clinics.³

Of the 1800 murders attributable to intimates in 1996, nearly three out of four had a female victim.² Furthermore, about 30% of murdered women were killed by intimates. Although domestic violence disproportionately affects women, men comprise about 15% of assault victims.²

In light of the high prevalence and seriousness of injuries, the medical system has been criticized for its inadequate response to adult victims of domestic violence.⁴⁻⁵ Some researchers have found that the majority of patients experiencing domestic violence are not identified in the medical system and thus do not receive appropriate social, legal, and psychological services.⁶⁻⁷ Barriers to identification may include time constraints, lack of training, discomfort, and a sense of powerlessness on the part of healthcare providers.⁸⁻¹⁰ In addition, patient disclosure of domestic violence may be hindered by their embarrassment, denial, and fear of retaliation by the abusive partner.^{11,12}

In an effort to improve the healthcare response, several states have passed mandatory reporting laws that require healthcare providers to report to the police injuries caused by adult domestic violence. Almost every state has laws that require reporting injuries due to deadly weapons, criminal acts, or violence,¹³ and these laws potentially apply to injuries that result from domestic violence as well. Five states have mandatory reporting laws that more specifically address reporting suspected cases of domestic violence injuries: California, Colorado, Kentucky, New Hampshire, and Rhode Island.¹⁴⁻¹⁸ Mandatory reporting laws in the Western states are described in Table 1. Most states have separate legislation that governs mandatory reporting for suspected abuse and/or neglect of dependent or incapacitated adults and elders.¹⁹

The California mandatory reporting law was sponsored by San Francisco Bay Area Assemblywoman Jacqueline Speier in response to a group of prenatal nurses who advocated for a legislative mandate to protect pregnant patients and their unborn fetuses from domestic violence.²⁰ The proposed legislation (AB 1652) was an amendment to existing laws that required healthcare providers to report to police any injuries caused by deadly weapons or felony assault, including sexual assault. In 1994, the California bill was passed by the legislature and signed into law. This statute requires that healthcare providers report to police all cases in which they

Table 1 Legislation governing mandatory reporting of injuries in the Western States*

California	Healthcare providers must report to the police if they provide medical care to a patient who they reasonably suspect has a physical injury that was caused by a firearm or other deadly weapon, or by "assaultive or abusive conduct." ¹⁴
Colorado	Physicians must report to the police if they attend a patient with an injury that the physician has reason to believe involved a criminal act, including injuries resulting from domestic violence. ¹⁵
Oregon	Physicians must report to the police if they are treating a patient who they have reasonable cause to suspect has an injury that was intentionally inflicted with a gun, knife, or other deadly weapon. ²¹
Montana	Healthcare professionals must report to the police if they treat a victim of a gunshot wound or stabbing. ²²
Arizona	Healthcare providers must report to police if they treat a patient for gunshot, knife, or other "material injury" that may have resulted from an illegal act. ²³
Idaho	Healthcare providers must report to police if treating a patient who they have reason to believe has received any injury inflicted by a firearm or that resulted from a criminal offense. ²⁴
Nevada	Healthcare providers must report to police if treating a patient with an injury which appears to have been intentionally inflicted by a firearm or knife. ²⁵
Utah	Healthcare providers must report to police if treating a patient with an injury inflicted by a gun, knife, or other deadly weapon, or by violation of any criminal statute. ²⁶
New Mexico, Washington	No statutes found governing injury reporting.

*Healthcare providers should review the statutes in their state to guide them through its provisions. The definition of healthcare providers varies from state to state; it typically includes physicians and nurses, but may be broadly defined to include all persons licensed to provide health services.

provide medical care for an adult who has an injury suspected or known to be the result of "assaultive or abusive" conduct,¹⁴ defined to encompass 24 separate criminal acts including "abuse of spouse or cohabitant." Providers are required to notify the police by telephone immediately, or as soon as practically possible, and to submit a written report within 2 days. The report must include the name of the victim, the victim's whereabouts, the extent of the victim's injuries, and the identity of the alleged perpetrator. The statute also contains recommendations for additional documentation in the medical record and victim referral to local domestic violence services. Health practitioners who make reports are protected from civil or criminal liability. Failing to report is a misdemeanor, however, and penalties may include fines up to \$1000 or a jail sentence up to 6 months or both.

Since its passage, the California law has created controversy within the healthcare, advocacy, social service, and law enforcement communities. Like much legislation, California's mandatory reporting law has both intended benefits and potential risks. The following discussion and debate is intended to raise both ethical and practical considerations in evaluating the possible outcomes of mandatory reporting of adult domestic violence injuries.

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In favor of mandatory reporting

It wasn't long ago that when the police responded to a domestic violence call, one officer would take the batterer around the block to "walk it off" while another officer stayed with the victim to "calm her down." Thankfully, that procedure has changed.

It wasn't long ago that if the victim of domestic violence told the police or district attorney that she did not want to "press charges," the matter was quickly dismissed. Nowadays most, if not all, prosecuting attorneys' offices have adopted a "no-drop" policy, which means that every case of domestic violence will be pursued if legally possible.

It took many years of advocacy and perseverance to change the way in which law enforcement officials respond to domestic violence. Healthcare providers should be held to the same standard. California's legislation that requires healthcare providers to report domestic violence injuries has successfully improved the response of the healthcare system to domestic violence, enabling the criminal justice system to enforce the law better.

As institutions respond, professional training increases

Since the mandatory reporting legislation was enacted, we

have seen a dramatic increase in the commitment made by healthcare institutions to address domestic violence. A few years ago, only 54% of emergency departments in California reported having policies and protocols for managing victims of domestic violence.¹ Today they often have standardized injury forms, information packets for patients, cameras for documenting injuries, and social service workers poised to intervene. We also have seen greater cooperation among healthcare institutions, law enforcement agencies, social services, and domestic violence advocates.

Mandatory reporting requirements have also increased professional training and continuing education on domestic violence issues. Because healthcare providers are now legally liable for reporting, they are motivated to acquire greater knowledge and skills. This training increases knowledge, comfort, skills for effective inquiry and intervention, and even screening practices.^{2,3} The demands, funding, and resources for these domestic violence programs would likely disappear if mandatory reporting by healthcare providers were repealed.

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Better identification, treatment, and documentation

Without question, mandatory reporting has improved the identification and treatment of those suffering from domes-

tic violence. Even those patients who present vague stories are now encountering healthcare providers who are familiar with the “red flags” of domestic violence. Trained healthcare providers can demonstrate concern, ask critical questions, and create an environment where patients feel safe. They can communicate to victims that domestic violence is no longer considered simply a “family matter,” so they will not be judged for being in such a relationship.

Mandatory reporting potentially improves documentation of domestic violence for use in criminal prosecution, divorce, child custody, and civil cases. Medical records and, less commonly, physician testimony have long been used in both civil and criminal cases as evidence of a history of domestic violence. California’s mandatory reporting law strengthens this tradition by requiring healthcare providers to be specific about the cause of injury and the name of the perpetrator. In addition, the statute recommends that providers improve medical recordkeeping by including a body map of the injuries and information about past domestic violence.⁴

Holding the perpetrator responsible

Mandatory reporting sends a clear message to the victim and to society that domestic violence is a crime and will not be tolerated. It is essential that our law enforcement agencies hold the batterer accountable, through incarceration or court-ordered counseling. The strongest deterrent to continued violence is the threat of incarceration,⁵ and prose-

cuting attorneys in California are able to convict batterers without the cooperation or participation of the victim.⁶ Failing to report domestic violence injuries is tantamount to aiding and abetting a batterer and deprives the victim of the opportunity for the criminal justice system to work.

Enhancing patient safety

Although opponents to the law suggest that reporting to police may cause retaliation by the batterer,^{7,8} we believe that the violence is more likely to escalate in the absence of intervention. The healthcare provider’s report to police provides an opportunity for intervention, which may be the only hope of stopping the violence. Domestic violence is a prelude to murder. For many victims, it is only a matter of time. Mandatory reporting by healthcare providers gives victims and their children a chance at survival in an environment free of violence.

Upholding patient autonomy

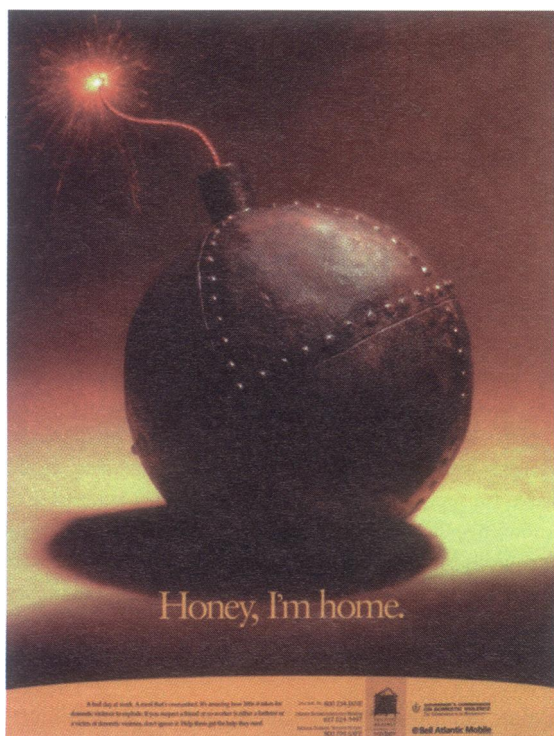
Under the California law, patients do not retain the right to refuse reporting. They do retain the right to refuse to interact with the police or social service providers, and thus their fundamental autonomy is upheld. Ten years ago, mandatory reporting of sexual assault crimes was harshly criticized for its paternalism. Interestingly, it is now widely accepted that sexual assault is a serious crime warranting law enforcement involvement, no matter what the circumstances of the victim or the relationship with the sex offender. Much like domestic violence, the victims of sexual assault are typically competent adults who have experienced a violent crime, often at the hands of someone known to them.

An opportunity for patient education

Often, through emotional support and honest discussions, patients can be persuaded to cooperate with law enforcement. These discussions provide an opportunity to educate victims about the risks to themselves and their children, their legal options, and opportunities for shelter and support in their community. Although victims may want to avoid family disruption, they need to understand that the violence and abuse are not in their family’s best interest. In fact, these discussions can help many victims find the resolve to leave their abusive partners in order to protect their children.⁹ Patient education shifts the responsibility for the violence from the victim to the batterer.

Protecting providers from liability

Among healthcare providers, before the legislation was enacted, ambiguity existed about reporting domestic violence. This ambiguity created conflict and fear and left healthcare workers wondering if they had done the right thing. Today, the mandatory reporting law gives healthcare providers protection from liability, as well as clear directions on how to proceed with a patient.



One of a set of posters sponsored by Bell Atlantic Mobile, displayed at the 32 state domestic agencies

AP Photo/Madison & Madison Public Relations

Professional and ethical imperative

There will always be room for individual judgment, but healthcare providers need to bear in mind their obligations to avoid causing harm, to prevent serious injury, and to act for the benefit of the patient. Consider the case of the emergency department practitioner who treated a domestic violence victim. Despite police and social service efforts, the patient was gunned down by her batterer the following morning. As the practitioner so poignantly stated, "I recognized the signs, I was able to get her to tell her story. I know that I did everything, along with the police and the advocate, to try to help her. I can't imagine how I would feel if I had done nothing."¹⁰

Conclusion

Some healthcare providers may feel that reporting will not stop the violence or protect the victim. They should recognize that this sentiment is an institutional form of learned helplessness. We have the capability to make a positive impact on the victims of violence every day. We need to work together to combat the feeling of institutional helplessness. As professionals, we all have a role to play in protecting victims of domestic violence and holding our colleagues accountable to sharing the commitment to stop domestic violence. For healthcare providers,

mandatory reporting is the first step to forming collaborations with other professionals who assist victims of domestic violence. If a healthcare provider were driving home from work and saw a domestic violence assault in progress, one would hope he or she would call the police. Should it be any different in the workplace?

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In opposition to mandatory reporting

- Joanna was treated in an emergency department for facial injuries caused by abuse. A report was made to the police that resulted in her husband's arrest in the hospital waiting room. Joanna returned home, thinking she was safe. Unfortunately her husband had been released and was at home waiting for her. She returned to the emergency department later that day with more severe injuries.
- Donna was injured by her boyfriend. She went to the hospital but was afraid to enter because of the reporting law. She spent the night in her car in the hospital parking lot and did not receive necessary medical treatment.
- Susan attended her prenatal appointment with a fractured hand. She spoke about her boyfriend's violence. When told that a report would be made, Susan became furious about the breach of trust and threatened to walk out of the clinic. To convince her to stay, the physician agreed not to report; instead, she documented the abuse and discussed the patient's options. The patient has continued to see this physician. They are working together on safety planning.¹

California's law mandating that healthcare providers report domestic violence injuries to law enforcement invokes fundamental professional and ethical questions for healthcare providers and may pose significant health and safety risks for patients.²

Places patients at risk for retaliation

Mandatory reporting may place some battered patients at risk of retaliation by the perpetrators. Batterers often escalate the violence if their partners seek outside help or attempt to leave the relationship.^{3, 4} Some batterers not only threaten retaliatory violence but also inflict further assaults during criminal justice proceedings. Although healthcare provider reporting may relieve some patients of the onus of reporting, other patients may be blamed by the perpetrator for revealing the source of their injury.

Serves as a deterrent to seeking medical care

Many domestic violence survivors prefer not to involve the police as a remedy for their situation. For example, some battered women might believe that the safest way for them and their children to escape further abuse is to go to a battered woman's shelter rather than to call the police. If these survivors know that healthcare providers will make a report

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despite their objections, they will likely refrain from telling their providers of the violence or from seeking care at all.⁵ Some perpetrators may also prohibit their current or former partners' access to health care when it is suspected that reports are being made. Mandatory reporting may particularly jeopardize the health of battered women who are undocumented immigrants, because they might fear that a visit to the doctor could result in their deportation. By limiting access to health care, this law also deprives survivors of the benefits of provider referrals to community agencies, legal services, and the criminal justice system.

Does not improve patient care

Mandatory reporting alone does nothing to ensure that providers will provide appropriate care to battered patients. Untrained and unskilled healthcare providers may be capable of making a police report but unable to provide the necessary support, education, and longitudinal care to patients. Some providers may even rationalize that making a report answers the problem, thus negating their responsibility for ongoing care. Providers who oppose reporting may choose not to inquire about domestic violence at all, thereby depriving patients of potentially beneficial interventions. A more effective and safer means of increasing identification, thereby improving care, would be to enhance provider education and awareness about domestic violence. We believe that any recent improvement in the healthcare response to domestic violence in California is due to major statewide educational initiatives and not to—but rather occurred despite obstacles posed by—mandatory reporting laws.

Creates expectation of services and protection

California's mandatory reporting law does not specify how law enforcement should handle the reports of healthcare providers. In fact, jurisdictions across the state vary widely in their policies and procedures for handling these reports.⁶ If there is no effective response to reports of domestic violence, a mandatory reporting law may create expectations of services and protection that cannot be met. This shortcoming could ultimately decrease patient trust in medical providers and the health system, diminish patient safety, and undermine the goals of punishment and deterrence.

Results in inconsistent and biased reporting

Although epidemiologic data on domestic violence injuries are essential, data collected through mandatory reporting may be incomplete and unreliable. Compliance with reporting laws may be low because of lack of awareness of laws, failure of providers to identify cases, opposition to mandatory reporting, and concern that police will not adequately respond.⁷ There are ways to collect data, such as anonymous reporting, that do not put patients at risk or jeopardize

their autonomy. Mandatory reporting may also result in disproportionate reporting of low-income and minority patients—as has been shown with child abuse reporting⁸—thus perpetuating harmful stereotypes.

Violates the doctrine of nonmaleficence

California's mandatory reporting law effectively removes the ability of healthcare providers to decide what is best for their patients. Consequently, providers may experience conflicts between the mandate to report cases of domestic violence injuries, the patient's desire not to report the violence, and their own judgment of what is in the best interests of the patient. Although reporting domestic violence injuries may, in some cases, lead to punishment of perpetrators and prevent further violence to the patient, in others, it may not be in the best interests of the patient. Some survivors may have already found that calling the police does not stop the violence, and may actually cause it to escalate. If the patient does not want police involvement, it is ethically troubling to override those objections, particularly because healthcare providers have little or no control over the level of protection that their patients subsequently receive.

Undermines patient autonomy

Competent informed adults should be given the freedom to act in accordance with their values and goals.⁹ Some survivors of domestic violence do not want their injuries reported because they believe that such a report will be ineffective or even counterproductive. Refusals such as these do not indicate impaired decision-making on the part of the patient. Domestic violence survivors are generally better situated than anyone else to assess their level of personal risk and the type and timing of action that would minimize that risk.

Because of its inherent paternalism, mandatory reporting legislation may be particularly detrimental to patients who are experiencing domestic violence. As part of their healing process, survivors of abuse need to reclaim their own sense of control and to be empowered to make decisions in their best interest. This legislation perpetuates harmful stereotypes of domestic violence survivors as passive and helpless. It interferes with self-determination and may revictimize battered patients by controlling decisions in their lives. The role of healthcare providers should be to render medical services, to counsel and refer to the proper agencies, and to empower and assist patients in choosing among a multitude of available courses of action, including calling the police.

Violates confidentiality and trust

Confidentiality of medical information encourages people to seek medical care and discuss sensitive issues with providers, fosters trust in the doctor-patient relationship, and respects patient privacy.⁹ Battered patients often con-

sider trust to be an essential aspect of their relationship with healthcare providers.¹⁰ Breaches of confidentiality undermine trust, deter patients from confiding in their providers, and may harm patients in more tangible ways as well.

Exceptions to confidentiality are justified in order to prevent serious harm to third parties, such as those at risk for infectious diseases, and to identify and protect persons who are incapable of seeking assistance on their own.⁹ Such exceptions are warranted when the benefits of the intervention are substantial and the harms resulting from the breach are minimized and acceptable. In the case of domestic violence, however, the harm to third parties is unclear, battered patients have intact decision-making capacity, and imposed interventions are of unproven benefit.

Conclusion

Domestic violence is a nationwide epidemic with significant health consequences, including emotional trauma, physical injury, and even death. As such, it requires a collaborative approach involving healthcare providers, community domestic violence agencies, law enforcement officials, and, most importantly, the patient. Mandatory reporting laws, though well-intentioned, are of unclear benefit in enhancing the safety and well-being of patients who have experienced domestic violence. Mandating a coercive intervention that fails to offer adequate protection may further jeopardize the patients we are trying to serve. Mandatory reporting may threaten the safety of battered patients, will likely discourage them from seeking care and accessing services,

does little to improve their health, may result in biased case identification, and violates patient autonomy and confidentiality. The role of the healthcare provider is not to serve as an arm of the criminal justice system, but rather to deliver optimal health care. In the case of domestic violence, this includes informing patients of their options (police involvement being but one of them) and helping them access those the patients believe will enhance their safety and well-being.

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The way forward

Unfortunately, the discussion about the potential risks and benefits of California's mandatory reporting law is based on well-intentioned conjecture and anecdotes rather than a formal evaluation of the law. While the contributors to these articles may disagree on the implications of California's mandatory reporting legislation, there is consensus regarding the continued role of healthcare institutions, medical providers, researchers, and policy makers in improving the medical response to abused patients. The following themes for improvement emerge from the debate on mandatory reporting.

Conduct research to document both beneficial and harmful outcomes of reporting

At present, little is known about the actual impact of the California law on local law enforcement and district attorneys' offices, healthcare institutions, community-based social service and advocacy organizations, and victims of domestic violence. Thus far preliminary research has failed to demonstrate any significant increase in the number of domestic violence injury reports from healthcare institutions.¹

Investigating the impact of mandatory reporting in California is complicated by recently enacted legislation. As a complement to current Joint Commission on the Accreditation of Healthcare Organizations requirements,² the 1995 amendments require hospitals and medical directors to establish written policies and protocols for screening patients for spousal and partner abuse.³ The impact of these legislative changes may be reflected by the increase in the number of emergency department protocols for adult victims of domestic violence, from 43% in 1993 to 79% in 1997.⁴

The attitudes of California physicians and patients toward mandatory reporting appear conflicted. Abused women have reported that although police intervention may hurt them, by inciting anger and retaliation, it also may help them, by providing protection.⁵ Similarly, while most California physicians agree that reporting potentially interferes with the doctor-patient relationship, most physicians also agree that the law may improve the healthcare and law enforcement response to domestic violence.⁶

Research on the experiences and perspective of battered patients, particularly those who have been report-

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ed by a healthcare provider, is essential in assessing the impact of the legislation. In 1998, a National Academy of Sciences committee for the Institute of Medicine recommended that "states refrain from enacting mandatory reporting laws for domestic violence until such systems have been tested and evaluated by research."⁷

Provide professional training and institutional support

Education, training, and the use of clinical guidelines for identifying and managing victims of domestic violence⁸ will continue to be a major force in improving providers' effectiveness and sensitivity. Already, the California legislature has amended physician and nurse licensing requirements to include training in the detection and treatment of spousal and partner abuse.⁹ Healthcare systems have an important role in instituting changes that facilitate and support interventions for domestic violence victims, including developing protocols, providing staff training, and evaluating progress through quality assurance procedures.¹⁰

Support and expand victim services

Another point of consensus is that legislators should make a commitment to improve the services provided by law enforcement, court systems, social services agencies, and community-based organizations. Shelters and community-based services need to be better funded, expanded

to meet the needs of rural areas and culturally diverse communities, and coordinated with health and legal systems to create a comprehensive network of victim support.

Consider policy alternatives

Although policy makers have an important role in improving the healthcare response to domestic violence, they need to consider the implications of different mandatory reporting provisions. The American Medical Association (AMA) proposed that mandatory reporting statutes include provisions that protect patient identity, allow competent adults to opt out of the reporting system, require reports to public health agencies, and include evaluation components.¹¹ In addition, the AMA suggested incorporating a sunset mechanism in which the legislation would be in effect only for a limited number of years. The legislative process must involve collaboration among professionals (medical, social service, legal) and domestic violence advocates and victims, and it must be informed by well-designed research on the impact of mandatory reporting.

Conclusion

In California, the law's recent implementation, its uniqueness, and its potential to serve as model legislation in other states highlight the importance of setting a research agenda to assess the impact of the mandatory reporting legislation. Ideally, policy should be based on sound scientific knowledge, but this has not been the case for mandatory reporting. Considering the seriousness of the issue and the investment so far, a more scientific approach to policy implementation must become a priority.



A solitary man walks across the prayer labyrinth at Grace Cathedral in San Francisco. Bay area churches held worship on 'The Gentle Life' last January to combat the domestic violence that escalates on Super Bowl Sunday.

AP Photo/Susan Regen

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